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VIA ECF AND FAX

Hon. Joseph F. Bianco
United States District Court
Eastern District of New York
100 Federal Plaza
P.O. Box 9014
Central Islip, NY 11722-9014

Re: *FragranceNet.com, Inc. v. FragranceX.com, Inc.*, CV-06-2225

Dear Judge Bianco:

We represent FragranceNet.com, Inc., plaintiff in the above-referenced action, and write pursuant to his Honor's Individual Rule III.A. to request a pre-motion conference before seeking leave to file an amended complaint. The need to amend the complaint is based on the following.

FragranceNet discovered that when a consumer conducts a search by typing in "fragrance net" (and other variations of plaintiff's mark), utilizing various search engines, including Google, an advertisement for defendant's Web site, www.fragrancex.com, appears immediately proximate to the search results screen, accompanied by a link to defendant's Web site. When done through Google as part of Google's AdWords Program, the advertisements are called "Sponsored Links;" when done through Yahoo!, the advertisements are called "Sponsored Results" (hereinafter "Sponsored Links" and "Sponsored Results" collectively are referred to as "Sponsored Links"). A "Sponsored Link" is created by bidding on certain keywords through Google's AdWords Program, usually words that the advertiser considers pertinent to its business. When a consumer conducts a search on Google or Yahoo! by typing in a keyword, the "Sponsored Link" will appear next to the search results screen. The only way to have one's "Sponsored Link" appear is by having bid on and paid for a keyword that triggers the appearance of the "Sponsored Link." As a result, when a consumer conducts a search for "Fragrance Net" and other variations of plaintiff's mark and/or name, defendant's "Sponsored Link" appears.

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After discovering what was occurring, plaintiff reviewed defendant's Web site and the source code underlying it and uncovered that defendant was using plaintiff's "fragrancenet" mark in its meta tags, and otherwise using variations of plaintiff's marks. A "meta tag" is information embedded into the HTML source of a Web page, invisible to consumers but able to be located and read by search engines by providing them with the information they are searching for. Thus, defendant is making unauthorized use of plaintiff's mark to attract consumers to its Web site that are searching for plaintiff.

Based on the foregoing, plaintiff's seeks to file an amended complaint containing new claims for trademark infringement, trademark dilution, violation of New York General Business Law § 133, state law dilution, injury to business reputation, and common law unfair competition and misappropriation.

Plaintiff has requested that defendant consent to plaintiff's amendment without the need to seek leave of the Court, but defendant, through its counsel, has refused. Accordingly, plaintiff respectfully requests this Court to schedule a pre-motion conference or to grant plaintiff leave to file an amended complaint.

Respectfully submitted,

Robert L. Sherman

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